INDEX

PAGE

Motion for Leave to File Brief as Amicus Curiae 1

The Interest of the Council on African Affairs, Inc. 2

Argument 2

CASES AND AUTHORITIES

Federal Loyalty Order (Executive Order No. 9385) 3

Schneiderman v. United States, 320 U. S. 118 3

Supreme Court of the United States

OCTOBER TERM, 1948

No. 711

HELEN PARKER, et al.,

Petitioners,

vs.

COUNTY OF LOS ANGELES, et al.

No. 712

JULIA LEARNED STEINER,

Petitioner,

vs.

COUNTY OF LOS ANGELES, et al.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF

The Council on African Affairs, Inc. (hereinafter called the Council) respectfully moves for leave to file a brief amicus curiae in support of petitioners herein. Consent to such filing has been granted by counsel for petitioners in each case. The County of Los Angeles denied its consent unless certain conditions, set forth in a letter on file with the Clerk of the Court, were met. Although such conditions are improper and onerous and could not be fulfilled by the Council, it is nevertheless respectfully requested for the reasons set forth hereafter that the motion for leave to file a brief amicus curiae be granted.

The Interest of the Council on African Affairs, Inc.

The Council is a membership corporation organized to study the conditions of life and work in Africa and to promote the welfare of the African people. Its activities include the holding of meetings, forums and discussions, the distribution of literature, memorials and studies on conditions and social status of native Africans and the solicitation of funds for the support of these projects.

Obviously the Council, as do similar organizations, relies upon its ability to reach large segments of the American people with the information it has at its disposal and seeks their aid in the accomplishment of the Council's purposes. It is therefore particularly susceptible to any abridgement of the right of any group of the American people to associate with, join or directly or indirectly support this organization. It is the contention of the Council that the Oath and Affidavit promulgated by the County of Los Angeles will have the inevitable tendency to curb its constitution right thus to solicit support.

Argument

The Council associates itself with the brief of petitioners herein which sets forth fully the constitutional issues raised by the Affidavit and Order. It respectfully urges that such constitutional infirmities are fatal to the Oath and Affidavit and that the judgment of the court below be reversed.

However, it wishes to emphasize certain harmful aspects of the entire procedure adopted by the County of Los Angeles.

The entire concept of the testing of "loyalty" by determining to what organizations a person belongs is repugnant to the constitutional guarantees of freedom of thought, speech, opinion and association. In every period when such repressive test oaths have been erected, the

common sense and wisdom of the American people have ultimately caused their repudiation.

The tensions arising from the vital issues facing the world after World War II have again given rise to repressive measures. The Affidavit and Oath under review here is but a local application of the Federal Loyalty Order (Executive Order No. 9385) which initiated the Federal "loyalty" program. By virtue of and acting pursuant to such Order, the Attorney General of the United States has purported to set up a list of organizations, membership in which is deemed to be "evidence of disloyalty".

The various states and municipalities, not to be outdone in seeking to impose conformity of thought, have likewise promulgated such oaths, lists, tests and similar incursions into the operation of men's minds. No longer is a person's ability, competence or merit measured by his intrinsic qualities, but they are now tested solely by a subjective standard of "loyalty". One of the tests is membership in an organization.

The Council submits, and the Court has repeatedly recognized, that opinions, thoughts and beliefs are personal and are not to be measured by the organizations, associations or groups to which a person belongs (*Schneiderman* v. *United States*, 320 U. S. 118). The repressive effect of this Oath and Affidavit has particular impact upon an organization such as the Council. Functioning as it does in the supercharged field of international relations where allegations of "loyalty" and "subversiveness" are freely bandied about, the Council and its membership may at any time find itself on a similar list. Opposition to the Marshall Plan, to which the Council is on record as being opposed, has been frequently stated in the Congress of the United States to be "disloyal". Yet the essence of any political democracy is the right of those who disagree with a particular policy of the Government to express themselves through organizations in order to make the weight of their opinions and beliefs felt.

The vice of the listing attempted by the County lies in the fact that free inquiry, thought, belief and association, which are essentials of an expanding democracy, are virtually destroyed for the employees of the County of Los Angeles. Not knowing at any time when an organization to which they belong may be added to the list promulgated by the County officials, it would indeed be a hardy employee who will in the future join any organization that expresses a viewpoint even remotely contradictory to that of either federal, state or city administrations. The political democracy of which the United States is justly proud cannot function in any such strait jacket.

For the foregoing reasons, it is respectfully urged that the decision of the court below is erroneous and should be reversed.

Respectfully submitted,

THOMAS R. JONES,
Attorney for Council on African Affairs, Inc.,
1270 Fulton Street,
Brooklyn 16, New York.

LIBRARY
SUPREME COURT, U. S.

Office - Supreme Court, U. S.
FILED
NOV 14 1949
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1948

No. [redacted] 49

HELEN PARKER, et al.,

Petitioners,

vs.

COUNTY OF LOS ANGELES, et al.

No. [redacted] 50

JULIA LEARNED STEINER,

Petitioner,

vs.

COUNTY OF LOS ANGELES, et al.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF

SAMUEL A. NEUBURGER,
Attorney for the Civil Rights Congress,
76 Beaver Street,
New York 5, N. Y.

INDEX

PAGE

Motion for Leave to File Brief 1

Interest of the Civil Rights Congress 2

Preliminary Statement 3

Argument 6

Point I—The Oath and Affidavit violate Amendments I and XIV of the Constitution by denying freedom of thought, discussion and association 6

Point II—The Affidavit and Order incorporate the unconstitutional doctrine of guilt by association 10

Point III—Violations of constitutional guarantees cannot be excused merely because petitioners are County employees 12

Conclusion 14

CASES CITED

Bridges v. Wixon, 326 U. S. 135, 163 ..... 9, 10

Cummings v. Missouri, 4 Wall. 277 (1867) 4

DeJonge v. Oregon, 299 U. S. 353 9

Gerland, Ex parte, 4 Wall. 333 (1867) 4

Hague v. C.I.O., 307 U. S. 496 9

Herndon v. Lowry, 301 U. S. 242 9

Knauer v. United States, 328 U. S. 654 9

Kotteakos v. United States, 328 U. S. 750, 772 10

Martin v. Struthers, 319 U. S. 141 9

McAuliff v. Mayor of New Bedford, 155 Mass. 216 12

Palko v. Connecticut, 302 U. S. 319, 326-327 7

People v. Crane, 214 N. Y. 154, 168; aff'd 295 U. S. 195 13

PAGE

Schneiderman v. United States, 326 U. S. 118, 135, 136 ..... 9, 10, 11

Stromberg v. California, 283 U. S. 359, 369 8

Thomas v. Collins, 323 U. S. 516, 543 9

Thornhill v. Alabama, 310, U. S. 88, 95 ..... 8, 9

United Public Workers v. Mitchell, 330 U. S. 75 ..... 12, 13

United States v. C.I.O., 335 U. S. 106, 140 9

West Virginia Board v. Barnette, 319 U. S. 624, 642 6

MISCELLANEOUS

Alien and Sedition Laws, 1798 (1 Stat. 570; 1 Stat. 596) 3

Beale, Are American Teachers Free, Scribners, pp. 61, et seq. 4

Chafee, Free Speech in the United States, pp. 513, et seq. 5

Constitution of the United States, First Amendment 7, 8

Emerson, Loyalty Among Government Employees, 58 Yale Law Journal 1, 92 n. 345 10

Executive Order 9385 3

Governor Alfred E. Smith, Public Papers, 292 (1923) 5

8 Jefferson, Writings, 1, 3 (1897) 4

Lusk Anti-Sedition Laws, New York State Legislature 4

Memorial of the Special Committee Appointed by the Association of the Bar of the City of New York, 5 N. Y. Legis. Doc. No. 30, 143rd Session (1920) 10

O'Brian, John Lord, Loyalty Tests and Guilt by Association, 61 Harvard Law Review 592 10

Supreme Court of the United States

OCTOBER TERM, 1948

No. 711

HELEN PARKER, et al.,

Petitioners,

vs.

COUNTY OF LOS ANGELES, et al.

No. 712

JULIA LEARNED STEINER,

Petitioner,

vs.

COUNTY OF LOS ANGELES, et al.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF

The Civil Rights Congress (hereafter called CRC) respectfully moves for leave to file a brief amicus curiae in support of petitioners herein. Consent to such filing has been granted by counsel for petitioners in each case. The County of Los Angeles denied its consent unless certain conditions, set forth in a letter on file with the Clerk of the Court, were met. Although such conditions could not be fulfilled by CRC, and it is submitted are improper and onerous conditions, it is nevertheless respectfully requested for the reasons set forth hereafter that the motion for leave to file a brief amicus curiae be granted.

Interest of the Civil Rights Congress

The challenge to the constitutional guarantees of freedom of thought, opinion and assembly contained in the Oath and Affidavit promulgated by the County of Los Angeles and supported by the decision of the court below has prompted the CRC to file a brief amicus curiae in support of the petitions.

CRC is a nation-wide organization, with chapters in principal cities, dedicated to the protection, strengthening, enforcement and enlargement of those civil rights guaranteed to all persons by the Constitution of the United States. In order to achieve these objectives, CRC's constitution provides that it will engage in activities along the following lines:

> "To strive constantly to safeguard and extend all democratic rights, especially the rights of labor, and of racial, political, religious and national minorities;
>
> "To combat all forms of discrimination against these groups;
>
> "To defend and aid victims of the fight for these groups;
>
> "To fight against domestic fascism and all of its forms —jim crow, anti-Semitism, red-baiting, discrimination against the foreign born.
>
> "To these ends the Civil Rights Congress dedicates itself—
>
> "To educate, mobilize, and help coordinate the efforts of the democratic forces of America in the defense and advancement of their civil rights and democratic rights;
>
> "To promote the unity of all groups and individuals dedicated to the defeat of fascism in all its forms."

However, CRC's interest in this proceeding is not limited to the vindication of these fundamental guarantees

only insofar as petitioners are affected by the decision below. CRC itself is listed as one of the organizations as to which a county employee must, under oath, admit or deny membership. It therefore has an additional and direct interest in this proceeding. Freedom of association insofar as CRC as an organization is concerned is at stake in this proceeding.

Preliminary Statement

The Oath and Affidavit adopted by the County of Los Angeles is an application on a local scale of the political test oaths instituted by the federal government through Executive Order 9385. The impact of these tests has been so great as to raise the gravest doubts as to the continued existence of the freedom of association, inquiry and opinion which is the heart of any democracy.

This attempt to decree political orthodoxy is not without precedent in the United States. And, significantly, in each historical period when such repressive measures have gained ascendancy, the common sense of the American people has subsequently repudiated them.

Thus, 1798 saw the enactment of the Alien and Sedition Laws (1 Stat. 570; 1 Stat. 596) resulting from the well-propagandized and baseless fears that the French Government was spreading "pro-French" propaganda throughout the United States. The critical state of Franco-American relations in that period nurtured those illusions. The results of the Alien and Sedition Laws and the prosecutions thereunder were so shocking to a people that only twenty-two years earlier had issued a Declaration of Independence speaking of certain "inalienable rights", that the Federalist Party proponents of the legislation were utterly discredited and their organization repudiated.

Jefferson repealed the Alien and Sedition Laws and pardoned all who had been convicted under them. In his inaugural address he proclaimed a principle of freedom of political expression that is the touchstone of political democracy:

> "If there be any among us who wish to dissolve this Union, or to change its republican form, let them stand undisturbed, as monuments to the safety with which error of opinion may be tolerated where reason is left free to combat it" (8 *Jefferson, Writings,* 1, 3, (1897)).

After the next great period of tension in the United States—the Civil War—the Congress as well as some of the state legislatures passed laws requiring loyalty oaths before certain professions could be practiced. Although these loyalty oaths resulted from a conflict during which loyalty to the preservation of Union was paramount, the Court struck them down as ex post facto laws and bills of attainder (*Cummings* v. *Missouri*, 4 Wall. 277 (1867); *Ex parte Gerland*, 4 Wall. 333 (1867)).

The next attempt to enforce political conformity followed World War I and the scars inflicted upon our democracy are still visible. The experience of New York State is perhaps typical of that throughout the United States and should be recounted because of its basic similarity to the issues presented herein.

The Lusk Anti-Sedition Laws were enacted by the New York State Legislature on the wave of hysteria and "red scare" that followed World War I and which caused it to expel five assemblymen duly elected on the Socialist ticket. The most sensitive and vulnerable group of public employees—teachers—were singled out by the Lusk Laws for investigation and discharge if they advocated a "change in the form of government of the United States." The tragic consequences of this law upon the teachers and the public education system and the evils resulting therefrom are described in Beale, *Are American Teachers Free*, Scribners, pp. 61, et seq.

So great was the public revulsion, that they were repealed in 1923. Governor Alfred E. Smith, in signing the repealer, stated:

> "The Lusk Laws * * * are repugnant to American democracy. * * * Freedom of opinion and freedom of speech were by these laws unduly shackled and an unjust discrimination was made against the members of a great profession. In signing these bills, I firmly believe I am vindicating the principle that within the limits of the penal law every citizen may speak and teach what he believes" (Smith, *Public Papers*, 292 (1923)).

The principles expressed in this message command the wholehearted approbation of the American people and are singularly apposite to the enactment under review herein.

The tensions following World War II resulted in a spate of loyalty oaths for employment, both state and federal. Indeed it has even been transferred to the field of private employment. These attempts to legislate conformity, decree orthodoxy, dictate what are "safe" thoughts and what are to be punished, prescribe modes of conduct and the limit of association under the guise of determining "loyalty" are contrary to the constitutional form of government enacted by our Founding Fathers. Moreover, and perhaps of greater significance, the history of similar enactments indicates that they are repulsive to the American people and are ultimately repudiated by them (Chafee, *Free Speech in the United States*, pp. 513, et seq.).

The Oath and Affidavit required of petitioners falls directly within that pattern of repressive legislation described above. In addition to its constitutional infirmities, set forth below, it transgresses against the spirit of American democracy so well epitomized in Mr. Justice Jackson's trenchant phrase:

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can

prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein" (*West Virginia Board* v. *Barnette*, 319 U. S. 624, 642).

ARGUMENT

POINT I

The Oath and Affidavit violate Amendments I and XIV of the Constitution by denying freedom of thought, discussion and association.

The Oath and Affidavit adopted by the County of Los Angeles requires all employees to disclose whether they have ever "been a member of or directly or indirectly supported or followed" any one of 144 named organizations—including CRC—none of which are unlawful or illegal—and two named publications—both of which are circulated through the mails.

In addition, they are required to disclose under oath whether since December 7, 1941, they have ever advocated or been a member of any political party or organization that advocates the overthrow of the Governments of the United States, the State of California, or the County of Los Angeles. Not satisfied with this affirmation, the County imposes a prior restraint that its employees will not, in the future, while in the employ of the County, thus advocate or join any political party or organization which thus advocates.

Failure to execute the Oath and Affidavit results in dismissal from employment. To make the pattern complete, if a response to the Oath and Affidavit or the result of an independent investigation by a County agency reveals that an employee is "subversively inclined," his name shall be publicly reported together with a recommendation for appropriate action.

The freedoms guaranteed by the 1st Amendment to the Constitution have been embodied in the 14th Amendment insofar as state action is concerned. The reasons have been lucidly stated by Mr. Justice Cardozo:

> "We reach a different plane of social and moral values when we pass to the privileges and immunities that have been taken over from the earlier articles of the Federal Bill of Rights and brought within the Fourteenth Amendment by a process of absorption. These in their origin were effective against the federal government alone. If the Fourteenth Amendment has absorbed them, the process of absorption has had its source in the belief that neither liberty nor justice would exist if they were sacrificed. Twining v. New Jersey, supra, 211 U. S. 78, at page 99, 29 S. Ct. 14, 19, 53 L. Ed. 97. This is true, for illustration, of freedom of thought and speech.
>
> "Of that freedom one may say that it is the matrix, the indispensable condition, of nearly every other form of freedom. With rare aberrations a pervasive recognition of that truth can be traced in our history, political and legal. So it has come about that the domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states, has been enlarged by latter-day judgments to include liberty of the mind as well as liberty of action. The extension became, indeed, a logical imperative when once it was recognized, as long ago it was, that liberty is something more than exemption from physical restraint, and that even in the field of substantive rights and duties the legislative judgment, if oppressive and arbitrary, may be overridden by the courts. Cf. Near v. Minnesota, supra; DeJonge v. Oregon, supra." *Palko* v. *Connecticut*, 302 U. S. 319, 326-327.

That "liberty of mind" which Mr. Justice Cardozo holds is protected by the 14th Amendment surely must include the liberty to formulate and express opinions on matters of public concern, to seek to influence others as to the correctness of these views through the press and to

join other like-minded persons in organizations and associations to foster and express these opinions.

> "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people * * * is a fundamental principle of our constitutional system" (*Stromberg* v. *California*, 283 U. S. 359, 369). See also *Thornhill* v. *Alabama*, 310 U. S. 88, 95.

Measuring these basic concepts against the Affidavit and Oath reveals the enormity of the damage caused by this enactment. The liberties of thought and the opportunities for free political discussion, guaranteed by the 1st Amendment, are thereby annihilated. One hundred and forty-four organizations, each of which is devoted to a cause which its sponsors or adherents consider of importance and none of which is illegal are listed. It would indeed be a hardy County employee who would join one of these organizations, including CRC, in the face of this blacklist.

> "Congress shall make no law * * * abridging * * * the right of the people peaceably to assemble * * *"

states the 1st Amendment. But the County of Los Angeles has abridged this freedom of association for petitioners and other County employees. It has, by issuing a blacklist of organizations, circumscribed the area wherein these employees may freely band together with other of similar interest.

And the range of organizations reveals that virtually every aspect of modern thought, every problem of the modern world, every controversy that has gripped the attention of thinking men, every issue over which difference of opinion may exist, is covered. It extends from political organizations (Farmer-Labor Party) to devising methods of controlling inflation (Hold the Price Line Committee), from trade unions (Marine, Cooks & Stewards) to those who believe in the principles for which the last war was fought (Anti-Nazi League), from

groups like the amicus herein (CRC) to organizations devoted to extending the benefits of suffrage to all (National Committee to Abolish the Poll Tax).

It therefore follows that under pain of drastic penalties —including the awful stigma of "disloyalty"—County employees must divorce themselves from all organizations concerned with events of import. And by the same token it deprives the body politic of the benefit of the information, knowledge and ability of a large group of persons with intimate knowledge of the practical function of government.

> "There is some modicum of freedom of thought, speech and assembly which all citizens of the Republic may exercise throughout its length and breadth which no state, nor all together, nor the nation itself, can prohibit, restrain or impede."
>
> *Thomas* v. *Collins*, 323 U. S. 516, 543.

See also:

> *DeJonge* v. *Oregon*, 299 U. S. 353;
> *Martin* v. *Struthers*, 319 U. S. 141.

The fundamental nature of this "modicum of freedom of thought, speech and assembly" has caused this court to discard the usual and customary presumption of constitutionality "when the legislation on its face or in specific application restricts the right of conscience, expression and assembly protected by the Amendment, as are given to other regulations having no such tendency" (*United States* v. *C.I.O.*, 335 U. S. 106, 140).

This court has upheld these freedoms in *DeJonge* v. *Oregon*, 299 U. S. 353; *Herndon* v. *Lowry*, 301 U. S. 242; *Hague* v. *C.I.O.*, 307 U. S. 496; *Thornhill* v. *Alabama*, 310 U. S. 88; *Thomas* v. *Collins*, 323 U. S. 516; *Bridges* v. *Wixon*, 326 U. S. 135; *Schneiderman* v. *United States*, 326 U. S. 135; and *Knauer* v. *United States*, 328 U. S. 654.

The Oath and Affidavit clearly restricts "the right of conscience, expression and assembly" and the decision below is therefore erroneous.

POINT II

The Affidavit and Order incorporate the unconstitutional doctrine of guilt by association.

It is of the essence of all loyalty tests, including the one under consideration, that they must apply the unconstitutional doctrine of guilt by association. This tendency has been denounced by a prominent attorney, with a long record of distinguished public service, John Lord O'Brian (*Loyalty Tests and Guilt by Association*, 61 Harvard Law Review 592). And his condemnation finds support in the decisions of this court:

> "The doctrine of personal guilt is one of the fundamental principles of our jurisprudence. It partakes of the very essence of the concept of freedom and due process of law" (*Bridges* v. *Wixon*, 326 U. S. 135, 163).
>
> "Under our traditions beliefs are personal and not a matter of mere association • • •" (*Schneiderman* v. *United States*, 320 U. S. 118, 136).
>
> "Guilt with us remains individual and personal • • •" (*Kotteakos* v. *United States*, 328 U. S. 750, 772).

In the Nuremberg trials the doctrine of guilt by association was rejected. Membership in a Naxi organization, without more, was not accepted as proof of guilt (Emerson, *Loyalty Among Government Employees*, 58 Yale Law Journal 1, 92 n. 345).

See also: *Memorial of the Special Committee Appointed by the Association of the Bar of the City of New York*, 5 N. Y. Legis. Doc. No. 30, 143rd Session (1920).

The reason for this salutary principle is not far to seek. It is no secret that not all the members of a particular association share the same views on all the questions of the day. Persons banding into organizations often submerge differences of opinion on other subjects in order to

push and advocate the central idea they have in common. Do members of the Republican Party espouse the foreign policy views of Senator Taft or Senator Vandenberg? Are members of the Democratic Party committed to the views of Representative Rankin or President Roosevelt? The past war furnishes an apt illustration of the union of various ideologies in support of a common objective—the defeat of fascism.

Yet the Affidavit and Order necessarily imputes to all supporters of the listed organization each and every one of the objectives of the organization. The Court in *Schneiderman* v. *United States*, 320 U. S. 118, recognized the fallacy inherent in that proposition.

The vice of the Affidavit and Order extends more deeply. It speaks not only of being a member in the organization but also of one who "directly or indirectly supported or followed" the organization. Shall one who attended a meeting of the Harry Bridges Defense Committee, one of the cited organizations, be deemed to have "directly or indirectly supported or followed" that organization? And if so, to what extent? Shall all the doctrines, thoughts and opinions of the different members of that Commission be imputed to such person?

Has a contributor to the Hold the Price Line Committee, one of the listed organizations, "directly or indirectly supported or followed" the theories of the members of that Committee as to the best means by which inflation can be combatted and a drastic rise in prices prevented.

The difficulties suggested above illustrate the enormity of this doctrine of guilt by association and the necessity for affirmation by the Court that guilt can only be personal. It is only upon proof of illegal or unlawful acts that sanctions can be imposed. The Affidavit and Order seeks to impose sanctions on mere membership in organizations without proof of illegal actions or activities either by the association or the members. The court has never sustained such standards of guilt.

POINT III

Violations of constitutional guarantees cannot be excused merely because petitioners are County employees.

Much of the thinking that a person surrenders some of his constitutional liberties by accepting government employment stems from the frequently quoted but rarely analyzed generalization of Mr. Justice Holmes in *McAuliff v. Mayor of New Bedford*, 155 Mass. 216, that:

> "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman."

All that was decided in that case was reaffirmed by the Court in *United Public Workers v. Mitchell*, 330 U. S. 75, relied on by the court below, and that is that the government may deal in specific ways with specific evils that may arise from government employment. It furnishes no support for the sweeping assertion of the court below that petitioners in accepting government employment "impliedly surrendered" their constitutional guarantees.

Indeed, the *Mitchell* case itself asserted that "none would deny" that Congress has no power to "enact a regulation providing that no Republican, Jew or Negro shall be appointed to federal office, that no federal employee shall attend Mass or take any active part in missionary work" (330 U. S. 75, 100). The opinion also pointed out that the Hatch Act does not restrict "Expressions, public or private, on public affairs personalities and matters of public interest, not an objective of party action. * * * (id.)."

Precisely this denial is involved here. The Oath and Affidavit lists 144 lawful organizations and two lawful publications and demands of petitioners and all County employees an accounting of the manner in which they have exercised the constitutionally guaranteed rights of speech, thought, opinion and association. The very inquiry itself

limits the right of expression on matters of public interest which the *Mitchell* case, supra, held could not be thus abridged.

The Court of Appeals of the State of New York has also repudiated the doctrine that government employees "impliedly surrender" their constitutional rights, as the court below asserted. In *People* v. *Crane*, 214 N. Y. 154, 168; aff'd 295 U. S. 195, Justice Cardozo stated:

> "A citizen may not be disqualified because of faith or color from service as a juror * * *. For like reasons we assume that he may not be disqualified because of faith or color from serving the state in public office or employment. It is true that the individual, though a citizen, has no legal right in any particular instance to be selected as a contractor by the government. It does not follow, however, that he may be disqualified from service, unless the proscription bears some relation to the advancement of public welfare."

Just as petitioners by accepting employment by the County nevertheless remain citizens of the United States, the County of Los Angeles, in relation to the petitioners' employment, is an employer. As such it is subject to the limitations of the Federal Constitution and bound to respect the constitutional guarantees contained therein. By reason thereof it has no power to encroach upon the liberties guaranteed to the people of the United States, even though the particular persons involved happen to be its employees.

There is a tragic irony in the position adopted by the County. In the name of preserving the Constitution of the United States, the County of Los Angeles has destroyed those very liberties and freedoms which are its sine qua non—the freedoms of thought, opinion, speech and association. It denial to any segment of the nation means, if we read history truly, an ultimate denial to all the nation.

CONCLUSION

The Oath and Affidavit violate freedoms of thought, expression, opinion and association guaranteed by the United States Constitution as well as incorporating the unconstitutional doctrine of guilt by association. In addition, it denies to government employees inherent constitutional liberties not subject to abridgement by virtue of such employment. The decision of the court below is therefore erroneous and should be reversed.

Respectfully submitted,

SAMUEL A. NEUBURGER,
Attorney for the Civil Rights Congress,
76 Beaver Street,
New York 5, N. Y.